IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 22300 of 2007(D)

PETITIONER:
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1. VIPIN V.RAJAN, S/O LATE V.A.RAJAGOPAL,
   35/2184B, ROSE VILLA, PIPELINE ROAD,
   PALARIVATTOM P.O., KOCHI-682025.
2. TINTU ALBIN, D/O ALBERT AND
   W/O VIPIN V.RAJAN, 35/2184B,
   ROSE VILLA, PIPELINE ROAD,
   PALARIVATTOM P.O., KOCHI-682025.

BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN

RESPONDENTS:

SUB REGISTRAR(MARRIAGE OFFICER),
OFFICE OF THE SUB REGISTRAR,
MARADU, ERNAKULAM DISTRICT.

BY GOVT PLEADER SRI BENNY GERVASIZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON 10/08/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W. P. C. No 22300 of 2007

Dated: 10th August, 2007.

JUDGMENT

Radhakrishnan, J.

Question that has come up for consideration in this case is whether a writ of mandamus can be issued directing the Marriage Officer to entertain an application which was submitted without complying with Section 15 (f) of the Special Marriage Act on the ground that the provision is directory.

2. Petitioners have approached this court challenging Ext. P4 order dated 18.07.2007 issued by the Marriage Officer rejecting the petitioners' application stating that they have not satisfied the provisions of Section 15 (f) of the Special Marriage Act. Petitioners submit that Section 15 (f) being a directory provision a writ of mandamus can be issued to receive the application, though the condition stipulated therein has not been satisfied. Petitioners had solemnized their marriage on 16.07.2007 at St. John Baptist Church at Palarivattom and hardly two days thereafter they preferred an application before the Marriage Officer under Section 15 of the Special Marriage Act for registration of the marriage. Marriage Officer rejected the

application since the petitioners have not resided for a period of 30 days within the jurisdiction of that Officer; before submitting the application. Petitioners have therefore not satisfied the condition stipulated in Section 15 (f) of the Act. Petitioners maintained the stand that Section 15 (f) being a directory provision the Marriage Officer has got the discretion to waive the requirements.

3. In Deepak Krishnan and another v. District Registrar and others (I.L.R 2007 (3) Kerala 256) this court has held that Section 15 of the Special Marriage Act is a directory provision. But the question posed in this case is, being a directory provision can the petitioners seek a writ of mandamus directing the Marriage Officer to accept such an application filed before the expiry of thirty days as provided under Section 15 (f) of the Act. We have examined the scope of Section 15 in the above case and held as follows:

> " Under such circumstances, we are inclined to take the view that Clause (f) of Section 15 is only a directory provision, and the failure to follow the said clause strictly would not make the registration of the marriage under the Act invalid. Failure to follow that clause does not render a thing duly done in disobedience of it, a nullity. It is trite law that a directory provision as such gives no discretionary power to do a thing not directed. Even if a provision is directory in nature, it should be substantially complied with.."

Directory provision is distinct from a discretionary provision. Directory provision gives no discretion - it is intended to be obeyed, but failure to obey it does not render a thing duly done in disobedience of it, a nullity. Craies on Statute Law, Seventh Edition, at page 250,stated as follows:

> "It is stated," said Denman J. in Caldow v. Pixell (1877) 2 C.P.D. 562,566) that in general the provisions of statutes creating duties are directory." By this is meant not that it is optional on the part of a public functionary whether he will perform duties imposed upon him by statute, but that if a public functionary neglects to perform a statutory duty of this kind that neglect on his part will not necessarily invalidate the whole operation with regard to which the statutory duty was to be performed. At the same time it must be borne in mind that it is not a universal rule that statutes which create public duties are merely directory. "In the absence of an expression provision, the intention of the legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative."

It is trite law that directory provision is meant to be obeyed. In the case of mandatory provision strict compliance of every law is necessary and in the case of directory provision it is not invalidated by such non compliance alone. Resultantly it follows even a directory provision is intended to be obeyed and does not authorise its deliberate and conscious violation or breach. In Jagdish Chandra Gupta v. Union of India (AIR 1965 Raj. 129) it has been held that directory provision no doubt calls for obedience but a failure to obey the direction may not render; the thing otherwise duly done

but in disobedience of it, an absolute nullity or nonest which the judicial eye must decline to see.

4. In Sharpe v. Wakefield (1891 AC 173 (HL) Lord Halsbury observed as follows: Discretion means when it is said something is to be done with discretion or unless something is to be done according to rules of reason and justice, not according to private opinion; according to law and not humour, it is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself. The expression "discretion" means when something is left to be done according to one's discretion. Discretion is a right to act in certain circumstances and within given limits and principles on the basis of own judgment and conscience. When a provision is declared directory that does not mean it is discretionary. Directory provision is meant for compliance and there is no discretion cast on the authority when the provision is directory. Only when a provision is discretionary then a person can exercise that discretion according to his judgment and conscience.

5. Under such circumstances since Section 15(f) is a directory provision, it is meant for compliance and no writ of mandamus can be issued to the Marriage Officer to violate that statutory provision. The

Marriage Officer was therefore justified in rejecting the application for non compliance of Section 15 (f) of the Special Marriage Act. We are inclined to reject the request of the petitioners to issue a direction to the respondents to receive the application for registration of their marriage due to non compliance of the condition mentioned in Section 15 (f) of the Act. Writ petition is therefore dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

10/08/2007
en

[true copy]

Appendix

Petitioners' exhibits:

Ext.P-1 - True copy of Marriage Certificate dated 16.07.2007 issued from St John The Baptist Church, Palarivattom, Kochi 25 to the petitioners

Ext.P2 - True copy of relevant pages of Passport bearing No A 934333 dated 5.1.2001 issued by the Regional Passport Officer, Ernakulam to the first petitioner

Ext.P3 - True copy of relevant page of Air Ticket issued from the office of Sri Lankan Airlines to the first petitioner.

Ext.P4 - True copy of Notice No XNDis/2007 dated 18.7.2007 issued by the Sub Registrar, Maradu to the first petitioner

[true copy]